

REMARKS

Claims 1-5, 8-16, 21-27, 30, 31, 35-38, 40-42, 46-50, 52, 56 and 57 are pending and presented for examination. Claims 1-5, 8-16, 21-27, 30, 31, 35-38, 40-42, 46-50, 52, 56 and 57 are rejected. Applicant traverses these rejections and respectfully requests reconsideration of the rejected claims in light of the following remarks. Claims 1, 24, 35, and 46 are independent claims. Claims 6-7, 28-29, 32-34, 39, 43-45, 51, and 53-55 were previously canceled, and claims 58-61 were previously withdrawn.

Claim Rejections Under 35 U.S.C. §103

1. Claims 1-3, 8-16, 23-25, 30, 31, 46-48, 52, 56 and 57 are rejected under 35 U.S.C. §103(a) as being obvious over U.S. Patent 7,048,984 to Seth et al. ("Seth")

Seth discloses an extrusion formed reticulated netting having reticulated hook fasteners. The netting includes two sets of strands at angles to each other. The netting is formed by a cut and stretch method entailing extruding a base layer having spaced ridges (e.g., hooks or ridges with hook cross-sectional shapes) which are cut at spaced locations. The base layer is then stretched in the direction of the ridges to space apart the cut portions to provide hooks.

Regarding claims 1, 24 and 46, the core contention upon which the rejection is based is that it would have been *obvious to try* to change the size of the fastener disclosed in Seth to achieve a fastener having a head with an overall height that is greater than 55 percent of an overall height of the fastener element, and a ratio of an overall height of the crook to an entrance height that is greater than 0.6, because Seth discloses a hook having a hook height of 556 μm and a hook droop of 292 μm , which is 52.5% of the hook height.

Regarding obviousness to try, in KSR, the Court indicated that "[w]hen there is a design need or market pressure to solve a problem and there are a *finite number of identified, predictable solutions*, a person of ordinary skill in the art has good reason to pursue the *known options* within his or her technical grasp. If this leads to the anticipated success, it is likely the product not of innovation but of ordinary skill and common sense." (emphasis added) *KSR Intern. Co. v. Teleflex Inc.*, 127 S.Ct. 1727. 1732 (U.S. 2007). An "obvious to try" argument is

erroneous when the prior art gives either no indication of which parameters are critical or no direction as to which of many possible choices are likely to be successful. *See Takeda Chem. Indus., Ltd. v. Alphapharm Pty., Ltd.*, 492 F.3d 1350, 83 U.S.P.Q.2d 1169 (Fed. Cir. 2007) (“Rather than identify predictable solutions . . . , the prior art disclosed a broad selection of compounds any one of which could have been selected as a lead compound for further investigation.”). Seth discloses, in Table 1, four specific example sets of dimensions for fasteners elements of hook netting producible by the method disclosed therein that exhibit his desired characteristics of being breathable and dimensionally stable (see Col. 5, Line 50 to Col. 6, Line 9). Seth also discloses favorable performance characteristics achieved by his hook netting, in terms of peel force and dynamic shear (see Col. 6, Lines 13 to Col. 7, Line 16). Seth fails to suggest any reason to modify the disclosed dimensions to achieve the structural relationships recited in Applicant’s claims 1, 24 and 46, and includes no indication of which parameters are critical or any direction as to how modify them to achieve the claimed ratios and therefore the benefits and advantages realized by Applicant’s invention. At the time of Applicant’s invention, a person of ordinary skill in the art would not have been able to look to the disclosure of Seth and find a finite number of identified, predictable potential solutions to the problem solved by the claimed touch fasteners. Seth fails to suggest or identify the criticality of the dimensions used in the claimed ratios, and one of ordinary skill in the art could not have pursued the unidentifiable potential solutions with any reasonable expectation of success. For at least these reasons, Applicant respectfully submits that claims 1, 24, and 46 are patentable over the cited art of record and respectfully requests a notice of allowance.

2. Claim 21 is rejected under 35 U.S.C. §103(a) as being obvious over Seth in view of U.S. Patent 6,248,419 to Kennedy et al. (“Kennedy”). Kennedy is cited as teaching laminating a hook fastener product to a backing material. However, As Kennedy adds no teaching relevant to the deficiency of Seth with respect to claim 1, Applicant submits that this claim is patentable at least as depending from a patentable base claim.

3. Claim 22 is rejected under 35 U.S.C. §103(a) as being obvious over Seth in view of U.S. Patent Application Publication US 2004/0068848 A1 to Ausen et al. (“Ausen”). Ausen is

cited as teaching a particular fastener element density. However, As Ausen adds no teaching relevant to the deficiency of Seth with respect to claim 1, Applicant submits that this claim is patentable at least as depending from a patentable base claim.

4. Claims 1-5, 8-16, 22-27, 30, 31, 35-38, 40, 41, 46-50, 52 and 56 are rejected under 35 U.S.C. §103(a) as being obvious over Ausen.

Like Seth, Ausen fails to disclose or suggest a fastener element having a head having an overall height that is greater than 55 percent of an overall height of the fastener element ($J/A > 0.55$), and a ratio of an overall height of the crook to an entrance height that is greater than 0.6 ($C/E > 0.6$). Ausen does not recognize that such ratios or combinations of ratios are important for enabling strong, short fasteners that are, e.g., capable of capturing and strongly retaining loops of loop materials having open structures. As with Seth, Ausen provides neither a reason or direction for making a proposed modification to the prior art shape nor any indication of which parameters should be changed to achieve one predicable solution from a finite number of identified potential solutions. Therefore, the inventions recited in claims 1, 24 and 46 would not have been obvious to try in view of Seth, Ausen, or any of the cited art of record.

In view of the foregoing, Applicant respectfully submits that the pending claims are patentable over the cited art of record. Applicant respectfully requests reconsideration of the pending claims and respectfully requests a notice of allowance.

CONCLUSION

The attorney of record below invites the Examiner to call with any questions regarding this matter, so that we can continue to advance the prosecution of this matter.

It is believed that all of the pending claims have been addressed. However, the absence of a reply to a specific rejection, issue or comment does not signify agreement with or concession of that rejection, issue or comment. In addition, because the arguments made above may not be exhaustive, there may be reason for patentability of any or all pending claims (or other claims) that have not been expressed. Finally, nothing in this paper should be construed as an intent to concede any issue with regard to any claim, except as specifically stated in this

Applicant : Mark A. Clarner
Serial No. : 10/688,031
Filed : October 15, 2003
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Attorney's Docket No.: 05918-0339001 / VGCP No. 6010

paper, and the amendment of any claim does not necessarily signify concession of unpatentability of the claim prior to amendment.

No charges are believed due. However, if any fees are due, they are being paid concurrently herewith on the Electronic Filing System (EFS) by way of Deposit Account authorization. Please apply all charges or credits to Deposit Account No. 06-1050, referencing the above identified Attorney Docket Number.

Respectfully submitted,

Date: December 22, 2008

/Brett A. Krueger/

Brett A. Krueger

Reg. No. 54,243

Fish & Richardson P.C.
225 Franklin Street
Boston, MA 02110
Telephone: (617) 542-5070
Facsimile: (877) 769-7945